

HEIRS OF HERMANN H.  
AND HUGO GOLDSCHMIDT

IBLA 70-679

Decided March 28, 1972

Appeal from decision (LA 038842, LA 038847) by the Riverside, California, district and land office rejecting applications for relief by purchase of desert land entries.

Affirmed.

Desert Land Entry: Relief Acts

Since the allowance of an application to purchase a desert land entry under the Act of February 14, 1934, is within the discretion of the Secretary, such an application is properly rejected where the entry lies in a block of public land having high recreational, scientific and natural values.

APPEARANCES: Sidney J. Dunitz for appellants.

OPINION BY MR. RITVO

The heirs of Hermann H. and Hugo Goldschmidt have appealed to the Director, Bureau of Land Management, from a decision dated June 24, 1970, of the Riverside, California, district and land office which rejected their applications filed April 30 and May 13, 1968, for relief by purchase of desert land entries LA 038842 and 038847 pursuant to section 5 of the Act of March 4, 1915, as amended, 43 U.S.C. § 337 (1970). 1/ The decision held that the applicants had failed to demonstrate that there was no reasonable prospect that they could secure water sufficient to effect reclamation of the entry and that since granting relief lies in the Secretary's discretion it was in the public interest to deny the applications in view of the recreational possibilities of the lands in the entry.

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1/ Although the application cites section 5, the appellants apparently seek relief under the terms of the Act of February 14, 1934, 43 U.S.C. § 339 (1970). Since the operative language in both sections is the same, the confusion is immaterial.

The entries were allowed in March 1911, for the W 1/2 sec. 26 and the E 1/2 sec. 27, T. 16 S., R. 11 E., S.B.M., California. By reason of extensions and suspensions they were determined to be in good standing as of December 2, 1965, when the last suspension was terminated. <sup>2/</sup> The land office notified the appellants that the entries had a remaining statutory life of 2 years, 6 months and 27 days and 2 years and 7 months, respectively, as of December 2, 1965.

The Act of February 14, 1934, supra, authorizes the Secretary, when it appears to his satisfaction with reference to any desert land entry made prior to July 1, 1925, on which \$3 per acre has in good faith been expended to the reclamation of the land that there is no reasonable prospect that the entryman would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, to allow, in his discretion, the entryman to purchase the land in his entry.

The applicants had a test hole drilled on each of the entries to a depth of 500 feet, which after an electric log test, they say, demonstrated that the wells would not produce enough water for irrigation and that the water would be of poor quality.

The land office concluded that, since the wells had not been gravel packed, cased or pump tested, the applicants had not demonstrated to the satisfaction of the Secretary that water for irrigation cannot be secured.

In addition it found that it would not be in the public interest to allow the applications for relief. It stated:

A recreation study of the desert public domain lands of California was recently completed by the Bureau of Land Management. This study demonstrated that this desert land has great potential for providing outstanding recreation and is serving far more people than had been realized. It further demonstrated the tremendous demands being placed on desert lands for recreation and many other uses can soon lead to the reduction or total destruction of a wealth of outdoor recreation opportunities. One of the results of this desert study is the specific analysis of the recreation demand and potential on 19 areas that have been identified as key recreation lands in the

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<sup>2/</sup> For details of the termination see, C. Arden Gingery, Michiko Shiota (Gingery), 78 I.D. 218, 222 (1971).

California Desert. The Yuha Desert Recreation lands is one of these 19 areas. It was found this area needs priority attention (priority group I) by the BLM. The assortment of natural, scientific, historical and recreational values cannot long endure the present intensive uncontrolled and promiscuous use. The lands contained in these two entries provide access to the Yuha Desert area and are part of a well blocked, federally owned area. Finally, cooperative investigations are being made of existing and potential park and recreation areas along the border by Mexican authorities and the National Park Service with the intention that management and operations of the Selected areas be retained by the existing administering authorities. The variety of recreation opportunities of such large population centers as Mexicali, Tijuana, and San Diego, suggests consideration of the area in this International proposal.

The role of the Secretary of the Interior as guardian of the Nation's natural resources has long been established, and his authority in that role to take steps reasonably calculated to insure the conservation and orderly utilization of those resources has been judiciously [sic] recognized.

Therefore, it is in the public interest to deny relief under the Act of March 4, 1915.

In the exercise of the discretion granted the Secretary, the land office denied the relief sought.

On appeal, the applicants assert first that they had done all that was necessary to prove that water sufficient in quality and quantity was not available for the irrigation of the land in the entries. While we find the evidence they presented persuasive, since it is our opinion that the applications were properly rejected as not being in the public interest, we pass over this aspect of the appeal.

They also contend:

The exercise by the Secretary of the Interior of his discretion to deny this application for relief

on principles of conservation would deprive applicants of rights under statutes and regulations on which they have relied for many years and which have led them to expend much time, effort, and money in good faith, all entirely within the letter and spirit of the applicable law and regulations.

They do not contradict the land office's analysis of the recreational, natural, and scientific value of the public lands in the area of the entries and the importance of the land in the entries to the full realization of these values.

As the record indicates the entries have existed in all for over 60 years and for over a half century without any attempt at development. The appellants' interest in the entries was apparently rekindled by the revocation of the suspension in December 1965. Then in August 1967, they filed earlier applications for relief under the same statute. In them they alleged on the basis of information from the United States Geological Survey and the State of California Department of Water Resources that there was no reasonable prospect that they would be able to secure water sufficient to effect reclamation of the land in the entries. They also stated that taxes had been paid in full and submitted a receipted bill for current taxes. In a decision dated December 7, 1967, the land office rejected these applications. It found that a field examination had reported that information obtained from the Geological Survey indicated that several wells that would produce water had been drilled in the area. Therefore it concluded that there is a reasonable prospect that enough water might be secured to effect reclamation of the entries. The appellants then engaged a well drilling service to test the entries themselves. As noted above, a 500-foot test hole was drilled on each entry and an electric log test run in each at the cost of \$3600 per entry. The tests demonstrated that some water is available at each site, but that only small to moderate yields of water could be expected and that the water is likely to be brackish and unfit for most uses, including irrigation.

The appellants contend that the land office decision deprives them of rights under statutes and regulations on which they have relied for many years. We do not agree. The opportunity granted by the Act of February 14, 1934, is not a right. It is a relief provision which the Secretary may apply when in his discretion he deems it fitting to do so. As the statute makes explicit a showing that an applicant has met the

condition for relief does not assure him of the dispensation it authorizes. There must be more. Since the obvious purpose of the Act was to allow an entryman who has made a good faith, but unsuccessful, attempt to reclaim the land to salvage something from his efforts, we may examine more closely appellants' activities.

For about a half century, nothing was done to reclaim the land; at most appellants paid taxes. When the suspension was terminated, the appellants, without having attempted to develop any water, asked for relief by purchase. At that time their expenditures had assuredly been minimal. It was only after the first applications were rejected that they endeavored to test the entries themselves and expended substantial sums in their search. Whether they were trying to prove that there was or was not water is not clear.

In any event, the appellants are not the typical desert land entrymen worn out by years of fruitless struggle who ask the Secretary for some consolation to ease their disappointment. Their expenditures were made at a time when even if successful the possibility that the land could be reclaimed was very doubtful.

But granting them the benefits of their exertions, we still find two obstacles in their path.

First, the land has been included in a first form reclamation withdrawal since October 19, 1920. While the withdrawal of itself does not deny the Secretary the power to grant relief to the applicants, it gives evidence of the public interest in the land.

But more important are the other recreational, scientific, historical and natural values the lands have.

In the circumstances we, too, find that the disposal of the land in the entries would not be in the public interest and conclude that the land office properly exercised the discretion of the Secretary in rejecting them.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R.

12081), the decision of the Riverside land and district office is affirmed.

Martin Ritvo, Member

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We concur:

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Edward W. Stuebing, Member

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Douglas E. Henriques, Member

